

STATE OF NEW YORK *Hammond Iron Works*
DEPARTMENT OF TAXATION AND FINANCE
BOARD OF CONFEREES - CORPORATION TAX BUREAU

In the Matter of the Applications :
of :
HAMMOND IRON WORKS : Hearing Case No. 6582
:
for revision or refund of franchise :
taxes under Article 9-A of the Tax :
Law for the fiscal years ended :
November 30, 1944 through November :
30, 1949 and December 1, 1949 through :
June 30, 1959. :

The taxes were audited and stated on May 13, 1966 and applications were filed on May 13, 1968.
Based on a field audit report of the Buffalo office, assessments were made as follows:

	<u>11/30/44</u>	<u>11/30/45</u>	<u>11/30/46</u>	
Entire Net Income				
or Total Capital	\$413,148.00	\$127,354.00	\$999,854.00	
Business allocation	005.834%	05.834%	05.834%	
Allocated income				
or capital	24,103.00	7,430.00	58,331.00	
Tax at 5 1/2% or 1 Mill	1,325.67	408.65	58.33	
Penalty	3,353.94	984.84	133.58	
Total	\$ 4,679.61	\$ 1,393.49	\$ 191.91	
	<u>11/30/47</u>	<u>11/30/48</u>	<u>11/30/49</u>	<u>6/30/50</u>
Entire Net Income	\$460,723.00	\$836,798.00	\$581,215.00	\$333,729.00
Business Allocation	05.834%	05.834%	05.834%	05.834%
Allocated Income	26,879.00	48,829.00	33,908.00	19,470.00
Tax at 5 1/2%	1,478.35	2,685.60	1,864.94	1,070.85
Penalty	3,208.02	5,505.48	3,599.34	1,991.78
Total	\$ 4,686.37	\$ 8,191.08	\$ 5,464.28	\$ 3,062.63
	<u>6/30/51</u>	<u>6/30/52</u>	<u>6/30/53</u>	<u>6/30/54</u>
	\$436,217.00	\$734,142.00	\$757,980.00	\$1,320,873.00
	05.834%	06.7324%	05.558%	06.7512%
	25,449.00	49,425.00	42,129.00	89,175.00
	1,399.70	2,718.38	2,317.10	4,904.63
	2,435.48	16.03	69.03	82.97
	\$ 3,835.18	\$ 2,734.41	\$ 2,386.13	\$ 4,987.60
	<u>6/30/55</u>	<u>6/30/56</u>	<u>6/30/57</u>	<u>6/30/58</u>
	\$735,674.00	\$199,463.00	\$1,768,646.00	\$2,955,434.00
	06.0997%	06.2599%	03.345%	06.1334%
	44,874.00	12,486.00	59,161.00	181,269.00
	2,468.07	686.74	3,253.86	9,969.80
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	\$ 2,468.07	\$ 686.74	\$ 3,253.86	\$ 9,969.80

6/30/59

Entire Net Income	\$1,405,763.00
Business allocation	03.0092%
Allocated Income	42,302.00
Tax at 5½%	2,326.61
Penalty	- - -
Total	\$ 2,326.61

The taxpayer started filing in New York for the period ending June 30, 1952 as a result of an anonymous letter to Spencer E. Bates, which stated in effect that State taxes were not withheld from the corporation's non-resident employees and hinted that franchise taxes might also be due.

Subsequently, the case was referred to the Special Investigations Bureau, and after preliminary investigation it was recommended in memorandum dated September 28, 1964 that the file be transferred to the Buffalo office for audit.

The taxpayer was incorporated in Pennsylvania on September 17, 1900, and is a manufacturer and erector of steel storage tanks and other similar facilities. The taxpayer operated five plants none of which was located in New York State. Tanks were normally designed and fabricated at the company plants and shipped to the job location for erection.

Audit findings disclosed that the taxpayer was engaged in construction and erection activities in New York State prior to 1952 when the first return was filed. Due to the great time lag and lack of sufficient records, the average business allocation percentage for the years 1952 through 1958 was applied to the years 1944 through 1951.

On the applications the taxpayer makes the following claims:

1. During the period December 1, 1944 through June 30, 1951 the taxpayer claims it was not taxable in New York since its business activities in all states except Pennsylvania were wholly interstate commerce. All of its sales were consummated by contract in Pennsylvania, all materials sold to New York purchasers were fabricated in Pennsylvania, all machinery, equipment and supplies used in setting up fabricated products were shipped from Pennsylvania, its employees in the plant as well as in the field were hired in Pennsylvania, it sent its erection personnel from Pennsylvania into New York, and all taxes were paid in Pennsylvania. The only New York activity was the erection of the fabricated product which was an integral part of its purchase.
2. Statute of Limitations (Section 212)
3. Because it believed, in good faith, that it had a valid basis for not filing returns, it requests due consideration to waiving all penalties for the period December 1, 1944 through June 30, 1951.
4. For all periods the taxpayer has submitted amended business allocations, claiming our field audit erroneously included the following items:
 - (a) Including in the property factor the value of "work in process" which included the value of fabricated materials shipped to various job sites in New York. The taxpayer claims they had no market or resale value except possibly as scrap steel since in each case they had been specially designed and fabricated to meet the specifications and requirements of the purchaser.

- (b) The allocation to New York of 100% of the total completed contract sales price for each contract completed in New York. Since all the fabrication cost was incurred in Pennsylvania, the taxpayer feels that the allocation of 50% of the total receipts to reflect the cost of the erection of the storage tanks in New York represents a fair apportionment between sales of goods and services rendered.

The taxpayer was regularly engaged since 1944 in performing services in New York State, and we believe such activities constitute doing business so as to subject it to the franchise tax. There is no Statute of Limitations that applies to the assessment of any tax or penalty prescribed by Article 9-A of the Tax Law.

On the question of work in process, we agree with the taxpayer that fabricated materials are appropriated to a particular contract and are not inventories of, but rather constitute an account receivable of the taxpayer. We also point out that the contract costs are included in the receipts factor.

Article 413(3) definitely states that if a taxpayer receives a lump sum in payment for services and also for materials or other property, the sum must be apportioned on a reasonable basis.

Based on the foregoing, we recommend that the business allocation percentage be corrected by eliminating "work in process" from the property factor and by allocating 50% to New York of the total cost of contracts from customers located in New York.

The question of penalties was discussed with Mr. Doran and at his suggestion we recommend that the Tax Commission modify the statutory penalties of 5% of the tax plus interest of 1% per month on the balance due to interest at the rate of 6% per annum.

The corrections in taxes and penalties are as follows:

	<u>11/30/44</u>	<u>11/30/45</u>	<u>11/30/46</u>
Entire Net Income			
or Total Capital	\$413,148.00	\$127,354.00	\$999,854.00
Corr. Bus. Allocation	01.8976%	02.968%	06.7899%
Allocated Income or			
Capital	7,839.00	3,779.00	67,884.00
Tax at 6%, 4½% or 1 Mill	470.34	170.06	67.88
Corr. Penalty	658.47	227.88	86.89
Total	1,128.81	397.94	154.77
Original Tax & Penalty	4,679.61	1,393.49	191.91
Reduction	\$ 3,550.80	\$ 995.55	\$ 37.14
	<u>11/30/47</u>	<u>11/30/48</u>	<u>11/30/49</u>
Entire Net Income	\$460,723.00	\$836,978.00	\$581,215.00
Corr. Bus. Allocation	02.1645%	02.5484%	02.8189%
Allocated Income	9,972.00	21,329.00	16,383.00
Tax at 4½% or 5½%	448.74	1,173.09	901.06
Corr. Penalty	547.49	1,360.78	991.17
Total	996.23	2,533.87	1,892.23
Original Tax & Penalty	4,686.37	8,191.08	5,464.28
Reduction	\$ 3,690.14	\$ 5,657.21	\$ 3,572.05

	<u>6/30/50</u>	<u>6/30/51</u>	<u>6/30/52</u>	<u>6/30/53</u>
Entire Net Income	\$333,729.00	\$436,217.00	\$734,142.00	\$757,980.00
Corr. Bus. Allocation	03.927%	04.8006%	04.8074%	03.7088%
Allocated Income	13,105.00	20,941.00	35,293.00	28,111.96
Tax at 5½%	720.78	1,151.75	1,941.11	1,546.16
Corr. Penalty	749.61	1,128.71	- - -	- - -
Total	1,470.39	2,280.46	1,941.11	1,546.16
Original Tax & Penalty	3,062.63	3,835.18	2,718.38	2,317.10
Reduction	\$ 1,592.24	\$ 1,554.72	\$ 777.27	\$ 770.94

	<u>6/30/54</u>	<u>6/30/55</u>	<u>6/30/56</u>	<u>6/30/57</u>
	\$1,320,874.00	\$735,674.00	\$199,463.00	\$1,768,646.00
	04.5708%	04.6008%	04.2566%	02.3729%
	60,375.00	33,847.00	8,490.00	41,968.00
	3,320.62	1,861.59	466.95	2,308.24
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	3,320.62	1,861.59	466.95	2,308.24
	4,904.63	2,468.07	686.74	3,253.86
	\$ 1,584.01	\$ 606.48	\$ 219.79	\$ 945.62

	<u>6/30/58</u>	<u>6/30/59</u>
	\$2,955,434.00	\$1,405,763.00
	04.3201%	03.6124%
	127,692.00	50,782.00
	7,023.06	2,794.01
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	7,023.06	2,794.01
	9,969.80	2,351.61
	\$ 2,946.74	\$ 442.40

/s/

WILLIAM F. SULLIVAN
Chairman

/s/

Approved
E. A. LORAN

/s/

Approved
8/19/68 A. B. MANLEY

J. J. GENEVICH

WFS:MB
7/12/68